



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/159675

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on October 02, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Racine County Department of Human Services (the agency) has correctly determined that the Petitioner's home is a countable asset.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Gail Heaslet, Economic Support Specialist
Racine County Department of Human Services
1717 Taylor Ave.
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On June 18, 2014, the agency sent the Petitioner a notice indicating that his Medicaid benefits would be ending effective July 1, 2014. (Testimony of Ms. Heaslet and testimony of Ms. Grochan)
3. [REDACTED], the Petitioner's guardian, submitted a request for fair hearing that was received by the Division of Hearings and Appeals on August 8, 2014. (Exhibit 1)
4. The City of Racine razed Petitioner's home. Consequently, the only thing left is the land on which Petitioner's home stood. It is valued at \$9,400. (Testimony of Ms. Grochan; Exhibit 4, pg. 2; (Testimony of Ms. Grochan)
5. The house was previously listed for sale, but [REDACTED] pulled the listing in December 2013, after the house was demolished. (Testimony of Ms. Grochan)
6. Petitioner owes property taxes in the amount of \$15,051.25 and has received a notice of tax intercept from Racine County. (Exhibit 4, pg. 3)
7. Petitioner is 93 years old and has income of \$381.00 per month. (Testimony of Ms. Heaslet)
8. Petitioner's only other assets are a life insurance funded burial trust with a face value of \$1,005.03 and a checking account with a balance of \$65.00. (Exhibit 3; Testimony of Ms. Heaslet)

DISCUSSION

In order to be eligible for Medicaid Benefits, a one person household must have assets below \$2000.00. *Medicaid Eligibility Handbook (MEH) §39.4.1*

It is the agency's contention that because the land in question is no longer listed for sale, it is no longer an exempt asset under *MEH §16.9*. As such, the land pushes the Petitioner over the \$2000 asset limit.

[REDACTED] contends that the land should not be considered an asset, because the Petitioner owes more in property taxes than value of the land.

The Medicaid Eligibility Handbook §16.2 states the following with regard to the availability of an asset:

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if:

1. The member lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the asset.

or

When the owner or owner's representative documents that the asset will not be available for 30 days or more.

Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

MEH §16.2.1

The Petitioner does not have assets that he could sell that would completely satisfy the debt he owes for the delinquent property taxes and given his age (93) and monthly income (\$381.00 per month), it is not likely he will be paying the debt off before he passes away. Consequently, even if the Petitioner sold the land, he could not make the proceeds available for his support and maintenance. The proceeds would need to go toward the delinquent property taxes. As such, the property taxes are an encumbrance on the sale of the property, which means the land does not meet the definition of an available asset and should not be counted.

CONCLUSIONS OF LAW

The agency incorrectly terminated the Petitioner's Medicaid benefits effective July 1, 2014.

THEREFORE, it is

ORDERED

The agency shall reinstate the Petitioner's Medicaid benefits effective July 1, 2014. The agency shall take all necessary steps to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

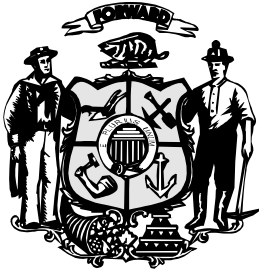
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of October, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 21, 2014.

Racine County Department of Human Services
Division of Health Care Access and Accountability